

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -OCTOBER 16- -7:30 P.M.

Mayor Johnson convened the Regular City Council Meeting at 8:43 p.m.

ROLL CALL - Present: Councilmembers deHaan, Gilmore, Matarrese, Tam, and Mayor Johnson - 5.

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

None.

CONSENT CALENDAR

Mayor Johnson announced that the Resolution Approving the Prioritized List [paragraph no. 07-501] was removed from the Consent Calendar for discussion.

Councilmember Matarrese moved approval of the remainder of the Consent Calendar.

Councilmember deHaan seconded the motion, which carried by unanimous voice vote - 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*07-496) Minutes of the Special and Regular City Council Meetings held on October 2, 2007 and the Special City Council Meeting held on October 9, 2007. Approved.

(*07-497) Ratified bills in the amount of \$3,517,098.14.

(*07-498) Recommendation to accept the work of Pacific Trenchless, Inc., for the Cyclic Sewer Repair Project, No. P.W. 05-03-11. Accepted.

(*07-499) Recommendation to approve an agreement with the Alameda County Congestion Management Agency for signal timing on Constitution Way to Lincoln Avenue, increase appropriations and appropriate grant funds of \$100,000 in Transportation Fund for Clean Air Funding. Accepted.

(*07-500) Resolution No. 14148, "Approving the Development Plan and Time Schedule for the Sewer System Management Plan as Adopted by the State Water Resources Control Board." Adopted.

(07-501) Resolution No. 14149, "Approving the Prioritized List of Projects for Consideration in the 2008 Countywide Transportation Plan." Adopted.

Mayor Johnson inquired whether the prioritized list includes bike and pedestrian projects.

The City Engineer responded bike projects are included in the City's Bike Plan; stated a certain amount of money is allocated to each of the planning areas and is applied to bike projects; the Cross Alameda Trail Project is included in the Countywide Bike Plan.

Mayor Johnson inquired whether the Plan has a list of prioritized projects.

The City Engineer responded projects are prioritized through the Congestion Management Agency (CMA); stated Alameda has approximately 12% of the high priority projects and has less than 3% of the total East Bay Area projects.

Mayor Johnson inquired whether Council would be approving the City's list of priorities tonight.

The City Engineer responded Council would be approving the projects that would go on the Countywide Transportation Plan, not the Bike Plan.

Mayor Johnson inquired whether the Cross Estuary Project is included on the [County's] list.

The City Engineer responded in the negative; stated the Bike Plan will be coming to Council in the next year or so; Council will have the opportunity to look at projects within the City Bike Plan; a list will be forwarded to the County once the City's Bike Plan is prioritized.

Councilmember deHaan moved adoption of the resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(*07-502) Resolution No. 14150, "Authorizing Open Market Purchase

from Versatile Information Products of Riverside, California Pursuant to Section 3-15 of the Alameda City Charter for Puma Software Management System." Adopted.

(*07-503) Introduction of Ordinance Amending the Alameda Municipal Code by Repealing and Amending Various Sections of Article I (Parking Lots) and Article II (On Street Parking Meter Zones) of Chapter XII (Designated Parking) and Adding a Definition Section (Section 12-0) Applicable to All Articles to Provide for the Regulation of Public Parking Surface Lots and Parking Structures Administered by the City of Alameda. Introduced.

(*07-504) Ordinance No. 2973, "Amending the Alameda Municipal Code by Revising Various Sections of Chapter II (Administration), Chapter VIII (Traffic, Motor Vehicles and Alternative Transportation Modes), and Chapter XII (Designated Parking) to Modify the Transportation Commission's Purpose and Authority." Finally passed.

REGULAR AGENDA ITEMS

(07-505) Public Hearing regarding financing for Shinsei Gardens Apartments under the requirements of the Tax and Equity Fiscal Responsibility Act (TEFRA) and the Internal Revenue Code of 1986;

(07-505A) Resolution No. 14151, "Approving, Authorizing and Directing the Execution of a Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority." Adopted; and

(07-505B) Resolution No. 14152, "Approving the Issuance of Tax-Exempt Bonds by the California Municipal Financing Authority for a Limited Partnership to be Established by Resources for Community Development or an Affiliate Thereof, with Respect to a Multi-Family Apartment Project." Adopted.

The Development Manager gave a brief presentation.

Mayor Johnson inquired what would happen in the case of default.

The Development Manager responded Resources for Community Development (RCD) and tax credit sponsors would be responsible.

Mayor Johnson inquired what would happen to the housing units.

The Development Manager responded that the financing documents would give rights to various funding sources; stated typically, the City puts itself in a position to step in and resolve issues.

Mayor Johnson inquired whether the City would have the opportunity to approve a new operator, to which the Development Manager responded in the affirmative.

Mayor Johnson inquired whether Operation Dignity would be entitled to operate the project from year 15 to 59.

The Development Manager responded in the affirmative; stated Operation Dignity's role in year one through 15 would be limited because of tax credit funding that the City would pursue; the project would become Operation Dignity's responsibility in year 15.

Mayor Johnson inquired whether the City would approve a new operator if something happened to Operation Dignity.

The Development Manager responded the long-term lease would allow the City to approve a new operator.

Councilmember Gilmore inquired what would happen if RCD and/or the California Municipal Finance Authority (CMFA) did not have the wherewithal to repay the bonds and whether the City's reputation or credit rating would be affected.

The Development Manager responded in the negative; stated the motivation would be to ensure that there was a successful operator with available resources.

Councilmember Gilmore stated that the City wants to be involved in and make sure that the housing project has resources; however, she does not want to see the City become financially responsible or have its credit rating or reputation flawed if the project goes belly up in three years.

The Development Manager stated numerous financing sources would be concerned that the project would continue to operate successfully; opportunities would be available to review the books and not be surprised.

John Stoecker, CMFA Financial Advisor, stated CMFA's name would be on the bond, not the City's; RCD would be responsible for repayment, not the City.

Vice Mayor Tam inquired how CMFA's bonds are guaranteed; further inquired who backs the funding sources.

Mr. Stoecker responded the bond is a private activity bond; stated the repayment is solely from RCD; CMFA does not give the funds; funds are given from a private investor; City Group is the lender

for the bonds; there is multi layer financing through tax credit and soft money; qualified institutional buyers are lending the funds for the bonds.

Mayor Johnson inquired whether the documents clearly state that the City's contribution is \$4 million.

Mr. Stoecker responded the documents are not complete; stated standard documentation states that the bonds are payable solely by RCD; there is no State, County, or City obligation.

Mayor Johnson inquired who would be managing the construction.

Mr. Stoecker responded RCD; stated RCD is a very well respected firm.

Mayor Johnson inquired whether RCD's projects have been on time and on or under budget.

The Development Manager responded RCD was selected by the City in 2002 to develop the 52-unit and 10-unit Bayport project; stated both projects were completed on time and on budget.

Mayor Johnson inquired whether the proposed project would be design-build, to which the Development Manager responded in the affirmative.

Mayor Johnson stated that the City needs to be clear that someone else would have to find the money if there is a shortfall at the end.

The Development Manager stated that RCD understands the City's funding limits; all financing documents are separate.

Mayor Johnson inquired whether the City would not fund operation, to which the Development Manager responded in the affirmative.

Mayor Johnson stated it is important that the City has the ability to make sure that anyone considered to operate the project has adequate funding and management skills if there is a change in management or operation.

Councilmember Gilmore inquired whether the City's remedy would be to give consent to a new construction entity and operator with adequate financing if RCD did not have enough funds to pay the bond obligation.

The Development Manager responded the decision is not solely the

City's; stated the City would have to go to the major financiers; all parties would be motivated to find an operator.

Mayor Johnson stated it is important to clearly state that the City cannot be looked to for additional money.

The Development Manager stated additional language could be added to the Owner Participation Agreement that further clarifies the City's obligation to the project.

Mayor Johnson stated the agreement needs to state that the City's contribution is \$4 million, period.

Councilmember deHaan stated that staff should consult with the City Attorney and come back with a locked, tight agreement; questioned whether timing was a concern.

The Development Manager stated that the City's \$4 million commitment is made in a very clear resolution and is on the books; staff is looking for authorization to use CMFA to release the bonds; RCD needs to submit an application to the California Debt Limit Allocation Committee by November 5.

The Base Reuse and Community Development Manager stated the commitment to the project started with the Community Improvement Commission (CIC) adopting a resolution committing up to \$4 million to the project; the City is first in line to have the \$4 million reduced if RCD is successful in bundling other money; RCD will be going to the Federal Home Loan Bank Board; an application has been submitted to the County for Home Funds; the schedule is ambitious.

Mayor Johnson inquired when Council would have the opportunity to review Operation Dignity's management requirements.

The Base Reuse and Community Development Manager responded some of the management requirements are exhibits to the settlement agreement approved last year; stated a lot of protections are included; the Owner Participation Agreement would reiterate the City's maximum \$4 million commitment and stipulate that the City's commitment decreases first if other funding sources are identified.

Councilmember Matarrese stated that he feels the two resolutions are fine; additional City protection could be in the third WHEREAS of the resolution approving the Joint Powers Agreement; a qualifying statement could be added to say that allocation of an amount not to exceed \$4 million is the qualifier for the City's participation in the 39-unit project.

Councilmember Gilmore concurred with Councilmember Matarrese; stated that she does not have a problem with the financing stream; all entities need to be aware that the City's commitment is \$4 million, the City will not be on the hook for any overruns, and that the City's funds are the first returned if RCD finds additional funds.

The Base Reuse and Community Development Manager stated the approved resolution includes said language; the language can be introduced in the Owner Participation Agreement when said agreement comes back to Council.

Councilmember deHaan stated that he would like to have the City Attorney advise on the matter.

The City Attorney stated that there would be no possibility that the City would have any residual liability to pay back the bonds; the bonds are privately issued bonds; the City would not be the borrower or the issuer.

Mayor Johnson inquired what is the project's total budget.

The Development Manager responded the total construction cost is approximately \$16 million; \$25 million touches the project over the course of the financing because of the construction and permanent financing flow.

Mayor Johnson inquired whether \$16 million is for construction, to which the Development Manager responded in the affirmative.

Mayor Johnson inquired whether \$16 million is a comfortable amount, to which the Development Manager responded in the affirmative.

Mayor Johnson opened the public portion of the hearing.

There being no speakers, Mayor Johnson closed the public portion of the hearing.

Vice Mayor Tam moved adoption of the resolutions with Councilmember Matarrese's proposed language regarding the \$4 million cap.

Councilmember Matarrese seconded the motion.

Under discussion, Vice Mayor Tam amended the motion with direction that 1) explicit language be added to the agreement that stipulates the City would not be responsible for repayment of the principal and prepayment premium as noted in Section 4 and 2) language be added to the resolution regarding the \$4 million cap related to the

issuance of the tax exempt bond as part of the Joint Powers Agreement.

Vice Mayor Tam stated that the added language would boot strap the two resolutions sufficiently.

Councilmember Gilmore amended the motion to include that future documents prominently indicate that the \$4 million be returned first.

On the call for the question, the motion carried by unanimous voice vote -5.

(07-506) Resolution No. 14153, "Encouraging the Oakland City Council to Revoke the Union Pacific Railroad Permit for the Fruitvale/Glascock Spur." Adopted.

The Deputy City Manager gave a brief presentation.

Mayor Johnson thanked staff for working on the issue and keeping Council informed.

Councilmember Matarrese stated that he attended a meeting hosted by Oakland Council President De la Fuente at the Fruitvale Transit Village; fifty or sixty people attended; a lot of questions are unanswered; serious problems in getting on and off the Island could result from running trains across the spur; contacting federal Representative Pete Stark and senators would be worthwhile to have them understand the City's predicament.

Vice Mayor Tam inquired whether the Union Pacific Railroad has been in communications with the City of Oakland.

The Deputy City Manager responded the City of Oakland tried to contact the Railroad; stated that she does not know whether the City of Oakland has been successful.

Vice Mayor Tam stated that she is supportive of the resolution; the resolution should be communicated to the Union Pacific Railroad.

Mayor Johnson inquired whether Councilmember Kernighan's office is involved.

The Deputy City Manager responded in the negative; stated the issue does not affect Councilmember Kernighan's district; President De La Fuente's staff advised her that Councilmember's are respectful of issues going on in individual districts and thought that Councilmembers would be supportive of Council President De La

Fuente's efforts.

Councilmember Gilmore inquired whether the City could contact another agency regarding environmental review rather than piggybacking on Oakland's coattails since railroads are governed by federal law.

The City Engineer responded the Surface Transportation Board (STB) handles environmental reviews; the question is whether a change on a spur line is under STP's jurisdiction anymore.

Councilmember Gilmore stated coordinating with Oakland is good but she does not like the idea of leaving the City's fate in another city's hands.

Councilmember Matarrese stated Council requested that the City Attorney's office review the issue initially; requested a report on the matter.

The City Attorney stated she would provide a report in Closed Session.

Councilmember deHaan stated that he is happy the City of Alameda is working with the City of Oakland; the City has not been as active as it should have been on some other projects.

Councilmember Gilmore moved adoption of the resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

ORAL COMMUNICATIONS, NON-AGENDA

(07-507) Dave Needle, Fernside Home Owners Association/CLASS Board Member; submitted handout; stated that he is disappointed in Council's actions regarding the Harbor Bay Isle Association settlement agreement; Council was fully aware of the significant community interest in the development; Council pushed through a quick, barely legally noticeable settlement meeting.

(07-508) David Howard, Alameda; provided handout; stated KitchenDemocracy.org announced its expansion into Alameda with a forum on the question of whether development plans for Alameda Point should be decided exclusively by Alameda residents and politicians; residents and politicians are invited to learn about and provide feedback on the controversial issue by going to www.kitchendemocracy.org; Kitchen Democracy is intended to augment the traditional ways that residents and elected officials interact;

Oakland, Berkeley, and Kensington residents and elected officials have used Kitchen Democracy as one of many ways to openly discuss community issues; Alameda Point development is a huge issue; the decision process is especially controversial because of the potential impact on the region.

Mayor Johnson inquired whether elected officials are writing regarding the matter.

Mr. Howard responded in the affirmative; stated the purpose of the forum is to allow elected officials to post an issue and solicit feedback.

Mayor Johnson inquired whether elected officials solicit feedback but do not engage in the conversation; further inquired whether anyone has looked into Brown Act issues.

Mr. Howard responded that he would ask Kitchen Democracy about Brown Act issues.

Mayor Johnson stated there could be Brown Act violations if more than one Councilmember participates in the discussion.

(07-509) The following speakers discussed the animal shelter: Kathy Marks, Alameda; Mary Sutter, Alameda; Jim Gotelli, Alameda; Daniel Mosso, Alameda; Kate Beck, Alameda; Judy Brock, Berkeley; Donny Chu, Alameda; Howard Goldberg, Berkeley; Christa Nicholas, Alameda (provided handout).

The Police Chief provided a brief report on the matter.

Councilmembers requested certain information and suggested the matter be placed on a future agenda for discussion.

(07-510) Bill Smith, Alameda, discussed care giving.

COUNCIL COMMUNICATIONS

(07-511) Consideration of the Mayor's nominations for appointment to the Civil Service Board, Golf Commission, and Oakland Chinatown Advisory Committee.

Mayor Johnson nominated Peter Horikoshi for appointment to the Civil Service Board and Jeff Wood for appointment to the Golf Commission and continued the nomination to the Oakland Chinatown Advisory Committee.

Mayor Johnson stated that Lee Perez has been the representative and

has indicated that he would like to continue; a representative from the Planning Board has missed a couple of meetings.

Councilmember Matarrese stated the person appointed to the Oakland Chinatown Advisory Committee needs to report back to Council.

The Assistant City Manager stated the Planning Board selected a member to serve; said member is charged to report back to the Planning Board regarding activities of the committee.

Councilmember deHaan inquired whether staff could be tasked to provide a summary, to which the Assistant City Manager responded in the affirmative.

Councilmember Matarrese stated the development of Alameda Point depends on the understanding of the settlement with Chinatown.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the Regular Meeting at 10:35 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
TUESDAY- -OCTOBER 16, 2007- -6:50 p.m.

Mayor Johnson convened the Special Meeting at 7:00 p.m.

ROLL CALL - Present: Councilmembers deHaan, Gilmore,
Matarrese, Tam, and Mayor Johnson - 5.

Absent: None.

The Special Meeting was adjourned to Closed Session to consider:

(07-492) Conference with Legal Counsel - Existing Litigation
(54953.9); Name of Case: Mikiten v. City of Alameda, et al.

Following the Closed session, the Special Meeting was reconvened and Mayor Johnson announced that Council received a brief on the status of this litigation.

(07-493) Mayor Johnson stated that Council met in Closed Session on October 9, 2007 with its City Attorney to discuss the status of the Harbor Bay Isle Association (HBIA) v. City of Alameda lawsuit and a potential settlement of the lawsuit; the Council approved a settlement of the lawsuit; a copy of the written settlement agreement is on file in the City Clerk's office; the settlement agreement resolves this litigation; the settlement provides that the maximum number of residential units that HBIA may have the potential to develop is 3,200 per the 1989 Development Agreement; the settlement also provides that the proposed Village 6 project constitutes a minor amendment of the 1989 Development Agreement and that, therefore, no impact fees or exactions beyond those in place in 1989 will be applicable to the Village 6 project, pursuant to the 1989 Development Agreement; because the 1989 Development Agreement preceded the City's Inclusionary Housing Ordinance, the proposed Village 6 project is not required to develop affordable housing on the site; HBIA will make a voluntary contribution of \$1 million to the City's low and moderate income housing fund, and make a \$500,000 contribution to a fund for the maintenance of Harbor Bay Parkway; this settlement agreement does not approve the Village 6 project and it does not commit the Council to any future legislative action; the proposed Village 6 project must still go through the normal public review process, including review of an Environmental Impact Report, consideration of a General Plan amendment and rezoning from commercial to residential use.

Council approved the settlement of the lawsuit by the following voice vote: Ayes: Councilmembers Gilmore, Matarrese, and Mayor Johnson - 3. Noes: Councilmembers deHaan and Tam - 2.

Adjournment

There being no further business, Mayor Johnson adjourned the Special Meeting at 7:15 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL JOINT CITY COUNCIL AND
COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING
TUESDAY- -OCTOBER 16, 2007- -7:25 P.M.

Mayor/Chair Johnson convened the Special Joint Meeting at 7:35 p.m.
Vice Mayor/Commissioner Tam led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers/Commissioners deHaan,
Gilmore, Matarrese, Tam, and Mayor/Chair
Johnson - 5.

Absent: None.

SPECIAL ORDERS OF THE DAY

(07-040CIC) Update on the Alameda Theater, Cineplex, and Parking
Structure Project.

The Redevelopment Manager gave a brief presentation and provided a
handout on parking information.

Chair Johnson requested that the parking information be posted on
the website; inquired whether money is available in the budget.

The Redevelopment Manager responded \$75,000 is left in the garage
contingency because of additional signage and security camera
allocations; stated staff recommends waiting until the project is
closer to completion before additional money is allocated; the
theater budget has a balance of approximately \$170,000.

Commissioner Matarrese inquired whether the garage's northern
elevation would be revisited.

The Redevelopment Manager responded in the affirmative; stated the
northern elevation and theater restoration funding can be discussed
once the project is near completion.

Chair Johnson inquired whether the blade sign was added back.

The Redevelopment Manager responded the blade sign and marquee were
added back; stated a strip is available for the northern elevation
landscaping.

Commissioner deHaan inquired what is the estimate for the northern
elevation art.

The Redevelopment Manager responded the estimate depends on the

extent of the art; stated banner options range from \$20,000 to \$50,000.

Chair Johnson stated that the contingency might be needed for something else between now and completion; art can be installed at any time.

Commissioner deHaan inquired when the grand opening is anticipated, to which the Redevelopment Manager responded March.

CONSENT CALENDAR

Councilmember/Commissioner Matarrese moved approval of the Consent Calendar.

Councilmember/Commissioner Tam seconded the motion, which carried by unanimous voice vote - 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*07-494CC/*07-041CIC) Minutes of the Special Joint City Council and Community Improvement Commission meeting and the Special Joint City Council, Alameda Reuse and Redevelopment Authority, and Community Improvement Commission meeting held on October 2, 2007. Approved.

AGENDA ITEMS

(07-495CC/07-042CIC) Public Hearing to consider approval of a first addendum to the Alameda Landing Mixed-use Development Project Supplemental Environmental Impact Report, first amendment to the Development Agreement, and first amendment to the Disposition and Development Agreement for the Alameda Landing Mixed Use Project to modify the Public Waterfront Promenade;

(07-495A CC) Adoption of Resolution Certifying the Addendum to the Alameda Landing Mixed-Use Development Project Supplemental Environmental Impact Report;

(07-495B CC) Adoption of Resolution Approving and Authorizing Execution of a First Amendment to a Disposition and Development Agreement with Palmtree Acquisition Corporation (Successor by Merger to Catellus Development Corporation) for the Sale and Development of Certain Real Property at the Fleet Industrial Supply Center (FISC);

(07-042A CIC) Adoption of Resolution Approving an Addendum to the Supplemental Environmental Impact Report for the Alameda Landing Mixed-Use Development Project Authorizing the Executive Director to Amend the Disposition and Development Agreement with Palmtree

Acquisition Corporation (Successor by Merger to Catellus Development Corporation) for the Sale and Development of Certain Real Property at the FISC;

(07-495C CC) Introduction of Ordinance Approving a First Amendment to Development Agreement DA-06-003 By and Between the City of Alameda and Palmtree Acquisition Corporation (Successor by Merger to Catellus Development Corporation. **Continued to November 6, 2007.**

ADJOURNMENT

There being no further business, Mayor/Chair Johnson adjourned the Special Joint Meeting at 7:47 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk
Secretary, Community Improvement
Commission

The agenda for this meeting was posted in accordance with the Brown Act.